

**RECOMMENDATION ON THE VARIANCE APPLICATION OF
Hartz/20 Enterprise/NRT Fence/Guard Booth (Variance)**

FILE # 13-830

I. INTRODUCTION

An application for one (1) bulk variance has been filed with the New Jersey Meadowlands Commission (NJMC) by Paul Hennessy of National Retail Transportation, Inc., for the premises located at 20 Enterprise Avenue, Block 57, Lot 2, in the Town of Secaucus, New Jersey. Said premises are located in the Commission's Light Industrial A zone. The variance is sought in connection with the applicant's proposal to construct a fence within the required front yard setback along Emerson Lane.

Specifically, the applicant is requesting relief as follows:

1. N.J.A.C. 19:4-8.10(a)1, which does not permit fences in required front yards. The applicant is proposing to construct an eight foot high fence within the required 50 foot front yard setback along Emerson Lane.

A public hearing was held at the Office of the Commission on Tuesday, March 18, 2014. Notice was given to the public and all interested parties as required by law. The public notice of this hearing was published in The Jersey Journal newspaper. No written objections were submitted to the Division of Land Use Management. All information submitted to the Division of Land Use Management relative to this application is made part of the record of this recommendation.

II. GENERAL INFORMATION

A. Existing and Proposed Use

The subject premises, 20 Enterprise Avenue, Block 57, Lot 2, is an 8.6-acre lot, containing a multitenant warehouse and distribution facility which had been

recently converted from a retail outlet mall, formerly known as the Harmon Outlet Center. The property is located in the Commission's Light Industrial A zone. The lot is regularly shaped and has two front yards. The site is bounded to the west by Enterprise Avenue, to the south by Emerson Lane, and to the east and north by adjacent warehouse facilities. The site was recently granted variance approval for front yard loading for 15 loading doors facing Emerson Lane.

The applicant is proposing to construct an eight-foot high fence within the required 50-foot front yard setback along Emerson Lane.

B. Response to the Public Notice

No written comments or objections were submitted to this Office regarding this application prior to the public hearing.

III. PUBLIC HEARING (March 18, 2014)

A public hearing was held on Tuesday, March 18, 2014. NJMC staff in attendance were Sara J. Sundell, Director of Land Use Management and Chief Engineer, Sharon Mascaró, Deputy Director of Land Use Management and Deputy Chief Engineer, Mia Petrou, Senior Planner and Brandon Alviano, Senior Planner.

A. Exhibits

The following is a list of the exhibits submitted by the applicant at the public hearing and marked for identification as follows:

<u>Number</u>	<u>Description</u>
A-1	"Fence & Guard House Plan," prepared by Kristine Kalfas, P.E., Dwg. No. SP-1, dated 11/23/11, revised through 12/6/13.
A-2	Aerial Photograph of 20 Enterprise, Secaucus, NJ and surrounding area.

B. Testimony

Thomas J. O'Connor, Esq., of Waters, McPherson, McNeill, P.C., represented National Retail Transportation, Inc. The following witnesses testified in support of the application:

1. Kristine Kalfas, P.E., Hartz Mountain Industries, Inc.;
2. George Cascino, P.E., P.P., Cascino Engineering & Planning; and
3. Kurt Duesterdick, National Retail Transportation, Inc.

Staff findings and recommendations are based on the entire record. A transcript of the public hearing was prepared and transcribed by Beth Calderone, Certified Court Reporter.

C. Public Comment

No members of the public were present at the public hearing.

IV. RECOMMENDATION

- A. Standards for the Granting of a Bulk Variance from the Provisions of N.J.A.C. 19:4-8.10(a)1, which prohibits fences in required front yards. The applicant is proposing to construct an eight-foot high fence within the required 50-foot front yard setback along Emerson Lane.**

The NJMC Zoning Regulations at N.J.A.C. 19:4-4.14(e) state in part that, *a variance shall not be granted unless specific written findings of fact directly based upon the particular evidence presented are made that support conclusions that...*

1. *Concerning bulk variances:*
 - i. *The variance requested arises from such condition that is unique to the property in question, is not ordinarily found in the same zone, and is not created by any action of the property owner or the applicant.*

The requested variance to permit an eight-foot high fence within the required 50-foot front yard setback arises from conditions that are unique to the site. The subject premises is a regularly-shaped, 8.6 acre lot, having two front yards. The property fronts on Enterprise Avenue to the west and Emerson Lane to the south. The site is currently improved with a warehouse/distribution facility that was recently approved for an additional 15 loading doors located in the front yard on the south side of the building facing Emerson Lane.

NJMC zoning regulations restrict the placement of fences within required front yards. The property currently contains approximately 125 feet of pavement from the edge of the parking lot curb to the face of the building, which includes car parking spaces and loading areas within the vehicular use area. This paved vehicular use area provides a 107-foot wide vehicular use area to allow for truck maneuvering to access the loading berths facing Emerson Lane. The area utilized for vehicular movements, parking and loading limits potential locations for the security fence. The applicant is proposing to install an eight-foot high chain link security fence at a six-foot setback from the Emerson Lane front yard property line. The proposed location of the fence within an existing landscaped area will preserve the established logistical functions of the site. These circumstances are unique to the property in question.

- ii. The granting of the variance will not adversely affect the rights of neighboring property owners or residents.*

The granting of the requested variance to permit a fence within the required front yard setback fronting Emerson Lane, will not adversely affect the rights of neighboring property owners or

residents. The site is located within a fully developed commercial/industrial area. Properties immediately located to the north, south, east and west of the premises are zoned Light Industrial A and consist of a variety of commercial and industrial uses. The proposed fence, which shall be set back six feet from the Emerson Lane front yard property line, will be screened from the public right of way as it will be located behind a buffer of established evergreen shrubs.

The proposed fence will not create any negative visual impacts to the neighboring properties or impede their ability to function as intended and, therefore, the granting of the variance will not adversely affect the rights of neighboring property owners or residents.

iii. The strict application of the regulations will result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the property owner.

The strict application of the regulations will result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the property owner. The site and building have been recently improved with 15 additional loading doors facing Emerson Lane. The previously approved layout of the car parking spaces, truck maneuvering and loading doors on the site has been designed to provide for the utilization of the new loading areas in a safe and efficient manner. The strict application of the required 50-foot front yard setback would place the fence in the middle of the paved vehicular use area, thus rendering the recently constructed loading docks essentially inoperable, while also placing the

required on-site car parking spaces outside the perimeter of the security fence. The proposed location of the fence, adjacent to the landscaped buffer, will allow the site to continue to function as intended, while maintaining the aesthetics of the neighborhood.

iv. The variance will not result in substantial detriment to the public good and will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.

There will be no substantial detriment to the public good and no adverse effects to the public health, safety, morals, order, convenience, prosperity or general welfare by the granting of the requested variance. The surrounding neighborhood properties principally consist of warehouse and distribution uses. The applicant proposes to construct a fence set back six feet from the Emerson Lane front yard property line. The applicant has recently added 15 loading doors facing Emerson Lane and provided an appropriate truck maneuvering area serving the doors.

To negate any negative visual impacts and any potential vehicular conflict between the car parking and the truck maneuvering and loading area in front of the new loading doors, the applicant has elected to locate the fence within an existing landscaped area behind mature evergreen shrubbery, to screen it from the Emerson Lane right-of-way. The fence, at this location, will have no adverse aesthetical impacts to surrounding properties or right-of-ways.

- v. *The variance will not have a substantial adverse environmental impact.*

The granting of the requested variance will not have any adverse environmental impacts. The location of the proposed fence within the required front yard facing Emerson Lane will not cause the NJMC's performance standards regarding noise, vibrations, airborne emissions, hazardous materials, glare or water quality to be exceeded.

- vi. *The variance represents the minimum deviation from the regulations that will afford relief.*

The requested variance represents the minimum deviation from the regulations that will afford relief. The subject premises fronts on Enterprise Avenue to the west and Emerson Lane to the south. Potential locations to provide a security fence, without altering the current safe operation, layout, and functionality of the parking, vehicular use, and loading areas facing Emerson Lane, are limited. The fence, as proposed, lies within a 15-foot wide vegetative buffer that is set back six feet from the property line and nine feet from the parking lot curb. Placing the fence at this location maximizes the unimpeded maneuvering area to and from the recently approved loading doors.

Furthermore, to minimize any visual impacts, the applicant has proposed to locate the fence behind an established vegetative buffer along the length of the site fronting Emerson Lane.


vii. Granting the variance will not substantially impair the intent and purpose of these regulations.

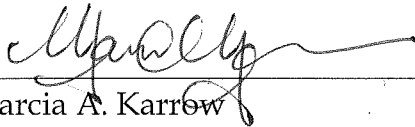
The requested variance to permit a fence within the required front yard setback along Emerson Lane will not impair the intent and purpose of the regulations. The intent of prohibiting fences in required front yards is to minimize the visual impacts to neighboring properties. The property in question is located in the Light Industrial A zone, which is comprised of various industrial and commercial uses. Although the fence will be located in the required front yard setback, it will cause minimal visual impacts to the surrounding area as it will be constructed behind an established landscaped screening buffer. Furthermore, the fence at the proposed location shall provide a level of security for the tenant while maintaining the overall logistical functionality of the site.

V. SUMMARY OF CONCLUSIONS

A. Standards for the Granting of a Bulk Variance from the Provisions of N.J.A.C. 19:4-8.10(a)1, which prohibits fences in required front yards. The applicant is proposing to construct an eight-foot high fence within the required 50-foot front yard setback along Emerson Lane.

Based on the record in this matter, the bulk variance application to permit an 8-foot high fence within the required 50-foot front yard setback, where fences are not permitted in any required front yard setback, is hereby recommended for approval.

<u>APPROVAL</u>	<u>5.5.14</u>	
Recommendation On	Date	Sara J. Sundell, P.E., P.P.
Variance Request		Director of Land Use Management

<u>Approval</u>	<u>5/6/14</u>	
Recommendation On	Date	Marcia A. Karrow
Variance Request		Executive Director